

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JAN M. GARRISON

Claimant

VS.

ASBURY PARK

Respondent

AND

**KANSAS ASSOCIATION OF HOMES
FOR THE AGING INSURANCE GROUP**

Insurance Carrier

Docket No. **1,049,683**

ORDER

STATEMENT OF THE CASE

Timothy Pringle requests review of the June 11, 2013, Order by Special Administrative Law Judge (SALJ) Jerry Shelor. The Board heard oral argument on November 13, 2013.

Timothy Pringle of Topeka, Kansas appeared as one of claimant's previous attorneys. Michael Entz of Topeka, Kansas, appeared for respondent. Claimant appeared pro se. There were no other appearances.

The record on appeal consists of the Award entered by ALJ Bruce Moore on January 9, 2013, including the stipulations of the parties and the evidence considered by Judge Moore; Mr. Pringle's motion to determine pro rata share of attorney's fees; the transcript of the April 12, 2013, hearing on Mr. Pringle's motion, with exhibits; SALJ Jerry Shelor's April 23, 2013, Order; the motion for order on payment of certain costs filed by respondent; the Order of Judge Shelor dated June 11, 2013; and all pleadings contained in the administrative file.

In the June 11, 2013 Order, the SALJ ruled on respondent's motion for order on payment of certain costs as follows:

Claimant's [former] attorneys, Timothy Pringle, Charles Hess and Roger Riedmiller are ordered to split the costs and pay Appino & Biggs Reporting Service the appearance fee [for the court reporting costs associated with the hearing regarding apportionment of attorneys fees] incurred within ten (10) days of the issuance of their bill.

Mr. Pringle timely filed an application for Board review.

ISSUES

Mr. Pringle contends the SALJ erred in ordering payment of the court reporting invoice by he and the other former attorneys for claimant, Mr. Reidmiller and Mr. Hess, because claimant's prior attorneys are not parties to this claim and therefore cannot be held liable to pay any court reporting costs. Mr. Pringle also maintains that all three of claimant's former counsel reached an agreement to divide the 25% contingency fee on the basis of one-third to each attorney and that such agreement was made before the motion hearing on April 12, 2013. Hence, the motion hearing was necessary only because claimant disputed the agreed upon apportionment of the fees and the SALJ erred in ordering the costs at issue be paid by claimant's former attorneys.

Mr. Entz advances the position that respondent should not be required to pay the costs associated with the motion hearing because respondent did not the cause the motion hearing and had no interest in the outcome of that proceeding.

Claimant maintains she should not have to pay the court reporting costs because she has no money. Claimant does not agree with the SALJ's prior Order that approved the one-third division of the attorneys fees, nor does she agree with the SALJ's equal division of the costs for the motion hearing among her former counsel. Claimant's comments at oral argument expressed her frustration with: 1) the length of time necessary to process her claim; 2) the distance she had to travel to receive authorized treatment; 3) the representation provided by some or all of her previous counsel; and 4) the delay in her receipt of PPD checks.

The sole issue for Board review is who should be ordered to pay the court reporting costs for the April 12, 2013, motion hearing?

FINDINGS OF FACT

In Judge Moore's January 9, 2013 Award, claimant was awarded temporary total and permanent partial disability benefits totaling \$100,000. The Award also provided:

The court finds attorney fee retainer is reasonable and approves such fee arrangement. Therefore, pursuant to **K.S.A. 44-536**, a lien is placed against the award in the amount of twenty-five (25) percent in favor of Claimant's attorney, Timothy Pringle. However, Claimant has had two prior attorneys in this claim, and each has filed an attorney lien in these proceedings. **Funds sufficient to satisfy a 25% attorney fee lien, and the expenses advanced by each of Claimant's previous and current counsel, are to be deducted from Claimant's Award and segregated in Mr. Pringle's trust account, pending an agreed division of the fees and expenses among counsel, or further order of the court.**¹

Tim Pringle, Charles Hess and Roger Riedmiller agreed in late January 2013, to split the 25% attorneys fees on the basis of one-third to each, plus payment of the expenses of each attorney. Claimant was opposed to the agreement and she asked Mr. Pringle to file a motion to determine pro rata share of attorney's fees, which he did on March 19, 2013. On March 29, 2013, the Director of Workers Compensation appointed SALJ Jerry Shelor "for the purpose of conducting a motion hearing, and issuing decisions" in this claim.

The hearing on Mr. Pringle's motion to determine pro rata share of attorney's fees was held before SALJ Shelor on April 12, 2013. SALJ Shelor entered an Order on April 23, 2013, approving the agreement among Mr. Pringle, Mr. Hess and Mr. Reidmiller that the 25% contingency fee be apportioned one-third to each each counsel, plus their expenses. No application for Board review of the SALJ's April 23, 2013 Order was filed.

After the April 12, 2013, hearing, Mr. Entz received an invoice from Appino and Biggs Reporting Service, Inc., in the amount \$1,053.75, which represented charges for court reporting services for the April 12, 2013, motion hearing. On May 30, 2013, a motion for order on payment of certain costs was filed by Mr. Entz. In that motion, respondent contended the costs for reporting services at the motion hearing should not be assessed against respondent because the issue considered at the motion hearing was limited to the apportionment of the 25% contingency fee, an issue in which respondent had no interest. Insofar as the record reflects, no hearing was held on respondent's motion and on June 11, 2013, the SALJ entered an Order assessing the court reporting costs equally among Mr. Pringle, Mr. Hess and Mr. Reidmiller.

PRINCIPLES OF LAW AND ANALYSIS

K.S.A. 2009 Supp. 44-555 provides:

The director or the administrative law judge, whoever is conducting the hearing or other proceeding is hereby authorized to assess all or a part of the certified

¹ Award at 7.

shorthand reporter's fees to any party to the proceedings for compensation and shall note the amounts assessed on the findings, award or order.

K.A.R. 51-2-4(d) provides:

The fees of the reporter for hearings and depositions, including all copies furnished as provided above, shall be paid by the respondent upon completion of the transcript by the reporter. The fees shall be assessed by the administrative law judge in the final award. If the fees are assessed against a party other than the respondent and if the respondent has paid the fees, the party against whom they are assessed shall make the necessary reimbursement.

The Board finds the \$1,053.75 invoice of Appino and Biggs Reporting Service, Inc., representing costs for the motion hearing before SALJ Jerry Shelor on April 12, 2013, shall be paid by respondent in compliance with K.A.R. 51-2-4. However, the Board also finds that such costs shall be assessed to claimant, who is ordered to forthwith reimburse respondent in the amount of \$1,053.75.

The Board recognizes that delays occur frequently in contested Kansas workers compensation claims. Claimant's frustration and dissatisfaction with that process are understandable. However, claimant's position in opposition to the division of attorneys fees agreed upon among her former counsel ironically resulted in further delays, both in her receipt of the compensation she was awarded and in the receipt by her former counsel of the fees and expenses they earned. Claimant entered into contingency fee agreements with all of her former counsel and she knew or should have known that pursuant to those contracts she would receive no more than 75% of the compensation recovered and paid on her behalf, with the 25% balance, plus expenses advanced on her behalf, to be paid from her award.

There is nothing in the record supporting the notion that the agreement reached among Mr. Hess, Mr. Reidmiller and Mr. Pringle was negotiated in bad faith or for purposes adverse to claimant's interests. The motion filed by Mr. Pringle and the hearing on that motion were necessary only because: (1) claimant instructed Mr. Pringle to file the motion to determine pro rata share of attorney's fees, and, (2) claimant opposed the one-third agreement despite the absence of any monetary interest of claimant in the outcome of the fee dispute she instigated.

There is no factual or legal basis for claimant's opposition to the one-third division of the 25% contingency fee. The record does not support that any of claimant's former lawyers acted improperly or failed to adequately protect Ms. Garrison's rights under the

Kansas Workers Compensation Act. Due to the representation claimant received, she received a maximum permanent partial disability award.²

It is inappropriate under the unusual circumstances of this claim for respondent to be ultimately responsible for the court reporting costs at issue. Respondent did nothing to cause the filing of the motion to determine pro rata share of attorney's fees or the necessity of a hearing on that motion. Respondent had no interest in the outcome of the attorneys fee issue.

Since this Order assesses the court reporting costs for the motion hearing to claimant, the Board need not address the issue raised by Mr. Pringle that neither he nor Mr. Hess and Mr. Reidmiller are parties to the claim and therefore they cannot be liable to pay the costs in question. The Board notes parenthetically the attorneys involved in post-award fee disputes have been ordered to pay the court reporting costs associated with a post-award hearing on the issue.³

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.⁴ Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

CONCLUSION

The Board reverses SALJ Jerry Shelor's June 11, 2013, Order. The court reporting costs associated with the April 12, 2013 motion hearing, totaling \$1,053.75, shall be paid by respondent to Appino and Biggs Reporting Service, Inc., following which claimant shall forthwith reimburse respondent in the amount of \$1,053.75.

AWARD

WHEREFORE, it is the decision of the Board that the June 11, 2013, Order of SALJ Jerry Shelor is reversed and the court reporting costs at issue shall be paid and reimbursed as detailed above.

IT IS SO ORDERED.

² K.S.A. 2009 Supp. 44-510e; K.S.A. 2009 Supp. 44-510f.

³ See, e.g., *Serrano v. Modern Air Conditioning*, No. 176,402, 1994 WL 749195 (Kan. WCAB Feb. 25, 1994).

⁴ K.S.A. 2009 Supp. 44-555c(k).

Dated this _____ day of December, 2013.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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